

Jose B. Lorenzo
Lorenzo Law Firm, P.A.
2040 Delta Way
Tallahassee, FL 32303
Ph: (855) 757-2757
Email: admin@lorenzolawfirm.com

Counsel for Plaintiff Lisa M. Ostella

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION**

LISA OSTELLA,

Plaintiff,

vs.

ORLY TAITZ,

Defendant.

CIVIL ACTION NUMBER:

8:11-cv-00485-AG (AJW)

**PLAINTIFF'S MEMORANDUM OF
LAW AND AUTHORITIES IN
SUPPORT FOR MOTION FOR
SUMMARY JUDGMENT AS TO
ALL FOUR OF PLAINTIFF'S
CLAIMS**

Date of Hearing:

Time of Hearing: 10:00 a.m.

Location: Courtroom 10D

Discovery Cutoff: None

Pretrial Conf.: None

Trial Date: None

**MEMORANDUM OF LAW AND AUTHORITIES
IN SUPPORT FOR SUMMARY JUDGMENT**

Plaintiff's Motion for Summary Judgment
Lorenzo Law Firm, P.A.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION:**

3
4 Plaintiff, Lisa Ostella (Ostella), asserts four claims in her Second Amended
5 Complaint (SAC): Invasion of Privacy – *False Light Publicity*; Invasion of
6 Privacy – *Appropriation of Name*; Cyber-harassment; and Defamation - *libel per se*
7 filed against Defendant, Orly Taitz. The claims are a result of Taitz's 11 authored
8 posts from her Internet blog accusing Ostella of committing fraud and diverting
9 funds. Four questions are to be answered by this Motion for Summary Judgment
10 (MSJ): i). Are Taitz's posts invading privacy - *False light publicity* of Ostella? ii).
11 Are Taitz's posts invading privacy - *Appropriating* Ostella's name?
12 iii). Are Taitz's posted statements about Ostella *cyber harassing* Ostella?, and
13 iv) Are Taitz's posted statements about Ostella *libelous Per se*?

14 **II. ABBREVIATED STATEMENT OF FACTS:**

15 **A. Taitz is a blogger with immense publicity**

16 As a blogger, Taitz published 11 posts from <http://www.oryltaitzesq.com>
17 accusing Ostella, private person, of stealing funds and hijacking a blog. [EXB. #1
18 **through 11**] [PPUF¹ ¶1] Taitz, also filed a police report and an F.B.I report
19 accusing Ostella of the same. [EXB. #5, 11, 16; PPUF ¶ 7, 11 & 16]. The
20 exhibits provided show that these posts have remained as last printed as January 8,
21 2018 and November 11, 2017 on the Internet. [EXB. #1 - #11, #13; PPUF ¶ 3 –
22 **14, 16**] Taitz's blog publicity is tremendous with a visitor count exceeding 94
23 million and enjoying a top tear ranking of 1% on the Internet. [EXB. #29 and
24 **#30; PPUF ¶ 32 & 33**], plus enjoying commercial incentives through advertising.
25

26
27 ¹ Plaintiff Proposed Statement of Uncontroverted Facts ["PPUF"]

1 error messages to donors, and still publicly claimed a hack occurred. [EXB. #26
2 and # 27; PPUF ¶ 29 & 30].

3 **E. Taitz wrongfully accuses Ostella to law enforcement**

4 Taitz filed a second filing with the FBI, which accused Ostella of diverting
5 funds. [EXB. #5; PPUF ¶ 7] Taitz also filed a report with the Orange County
6 Sheriff's Department, accusing Ostella of taking \$10,000 and stating that she had a
7 criminal record, i.e. that she was a/k/a Lisa Liberi, a person who a criminal record.
8 [PPUF ¶ 19]

9 **F. Ostella ends access to blog to allow for an investigation**

10 Ostella started to transfer Taitz's content to another file after Ostella told
11 Taitz to correct her FBI report. [PPUF ¶ 44] Ostella had told Taitz to find another
12 webmaster if she did not correct her report to the FBI. Hence, Ostella stopped
13 transferring the content files to *defendourfreedoms.net* and all access to the beta
14 blogsite ended to allow for an investigation. [PPUF ¶ 45] Ostella was not able to
15 sell the web-product to Taitz. Ostella would not hijack her own web-product that
16 client did not buy.

17 **G. Taitz reports from and about her PayPal records accusing Ostella**

18 Taitz posts claim that she reviewed her PayPal donation account records that
19 she controls. [EXB #1- #13, #16; PPUF ¶ 3 – 14, & 16], Taitz even controlled the
20 donate plugin that Ostella created and gave to Taitz on December 28, 2008. [EXB
21 #25; PPUF ¶ 28] Ostella's bank is not associated with Taitz's PayPal donation
22 accounts. [EXB #20 - #24; PPUF ¶ 23 - 27]

23 **H. Taitz PayPal records contradict Donation Diverting Claims**

24 Taitz's subpoenaed PayPal records contradict Taitz's criminal accusation of
25 Ostella. Taitz PayPal donation records do not show that donations were diverted.
26 Taitz has had these records at her disposal. [EXB #20 - #24; PPUF ¶ 23 - 27]

I. Taitz published 11 libelous posts

1. 4/17/2009 - "***More explosive Information dossier #6***" a posting of dr TAITZ@yahoo.com email on www.orlyTAITZesq.com, **EXB. #11; PPUF ¶ 13.**
2. 4/18/2009 "***Follow up on Lisa Liberi, Paralegal to Phil Berg***" a posting from www.orlyTAITZesq.com. **EXB. #1; PPUF ¶ 3.**
3. 4/18/2009 - "***Don't Be Fooled***" posted on www.orlyTAITZesq.com, **EXB. #2; PPUF ¶ 4.**
4. 4/19/2009 - "***Every day I get such evidence of missing or misdirected funds***" posted on www.orlyTAITZesq.com. **EXB. # 3; PPUF ¶ 5.**
5. 4/20/2009 - "***About Lisa Ostella - don't patronage diverting funds from a nonprofit, don't be part of slander***" posted an email on www.orlyTAITZesq.com. **EXB. #4; PPUF ¶ 6.**
6. 4/21/ 2009 - "***Update on Lisa Ostella and Lisa Liberi,***" posted a letter written to Mr. Al Barrs on www.orlyTAITZesq.com verifying the filed OCSO report. **EXB. #5; PPUF ¶ 7.**
7. 4/23/2009 - "***ORLY, Rush Limbaugh put article that mentions you on his website!!!***" on www.orlytaitzesq.com. **EXB. #6; PPUF ¶ 8.**
8. 4/23/2009 - "***Fwd: Lisa Ostella Internet Fraud in North Brunswick, N.J.***" on www.orlytaitzesq.com. **EXB. #7; PPUF ¶ 9.**
9. 5/19/ 2009 - "***NJ Police***" posted on www.orlyTAITZesq.com. **EXB. #8; PPUF ¶ 10 & 11.**
10. 1/29/2010 - "***I Need Your Help***" on www.orlytaitzesq.com. **EXB #9; PPUF ¶ 12.**
11. 3/3/ 2011 - "***Who are these people in Germany threatening me?***" posted on www.orlyTAITZesq.com. **EXB. #10; PPUF ¶ 13.**

1 **J. Taitz's Knowingly Lacks factual support for her Statements**

2
3 Because Taitz never had the factual information to support her accusations
4 of Ostella, Taitz sought to ask for information, from supporters, in January 29,
5 2010 post [EXB #9; PPUF ¶ 12.]. Taitz is still at it, nearly nine (9) years after her
6 libelous statements started, asking people, on March 10, 2018, through her *Twitter*
7 account,³ for information.[EXB #37; PPUF ¶ 50] Taitz's actions are brazen and
8 reprehensible, especially so, since Taitz has done every possible filing and appeal,
9 to delay this case and prevent discovery, and frustrate timely adjudication of this
10 case. In the absence of cooperating in discovery, and not producing supporting
11 information for her allegations, the Defendant fervently seeks help. At this late
12 juncture, it appears that the Defendant is in a desperate search for credibility.

13
14 **III. ARGUMENT FOR SANCTIONS**

15 **A. Taitz's refusal to disclose and provide discovery is sanctionable**

16 Taitz has not provided information to support the truth of her accusations.
17 Since inception of this case, Taitz has not provided defense supportive information
18 addressing truthfulness of her statements. Taitz did not productively respond to
19 2016 and 2017 discovery requests nor has Taitz provided Rule 26 disclosures,⁴

20
21
22 ³https://twitter.com/DrOnlyTaitzEsq/status/972508369117265920?ref_src=twsrc%5Etfw&ref_url=https%3A%2F%2Fs9e.github.io%2Fiframe%2Ftwitter.min.html%23972521065510526977

23 ⁴ Fed. R. Civ. P. 26(a) states in pertinent part:

24 (a)Required Disclosures.

25 (1) *Initial Disclosure.*

26 (A) *In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by
27 the court, a party must, without awaiting a discovery request, provide to the other parties:(i) the
28 name and, if known, the address and telephone number of each individual likely to have

1 even after Ostella provided her Rule 16-2 Meet and Confer Pre-trial Conference
2 Disclosures including exhibits, on February 3, 2018.

3 Taitz repeatedly abused the Anti-SLAPP Act provisions, without proving
4 truthfulness, and has kept asserting the mere existence of a "cause" with the words
5 "defend our freedoms *foundation*" to refuse providing information to support her
6 written accusations of Ostella or to prevent discovery of her information.

7 Taitz's willful refusing to cooperate with discovery, disclosures, and pretrial
8 conference memorandum is sanctionable.⁵ Taitz's answer and affirmative defenses
9 to the Ostella Second Amended Complaint (SAC) can be stricken.⁶ See also,
10 Hoffman.⁷ Taitz did not comply, with Rule 26 and Rule 37.⁸ Taitz's conduct has
11 prejudiced Ostella's ability to prosecute this case by denying the opportunity to
12 assess "whatever" Taitz seeks to introduce, "now".
13
14
15

16 discoverable information—along with the subjects of that information—that the disclosing party
17 may use to support its claims or defenses, unless the use would be solely for impeachment; (ii) a
18 copy—or a description by category and location—of all documents, electronically stored
19 information, and tangible things that the disclosing party has in its possession, custody, or
20 control and may use to support its claims or defenses, unless the use would be solely for
21 impeachment;...(iv) for inspection and copying as under Rule 34, any insurance agreement
22 under which an insurance business may be liable to satisfy all or part of a possible judgment in
23 the action or to indemnify or reimburse for payments made to satisfy the judgment.

24 ⁵See Phoceene Sous-Marine, S.A. v. U.S. Phosmarine, Inc., 682 F.2d 802, 806 (9th Cir.1982) ("It
25 is firmly established that the courts have inherent power to dismiss an action or enter a default
26 judgment to ensure the orderly administration of justice and the integrity of their orders.").

27 ⁶ See Anheuser-Busch, Inc. v. Natural Beverage Distributors, 69 F.3d 337, 348 (9th Cir.1995)).

⁷See Hoffman v. Construction Protective Serv., Inc., 541 F.3d 1175, 1179 (9th Cir. 2008)).

⁸ The parties are prevented, pursuant to Rule 37, Fed. R. Civ. P. 37(c)(1)⁸, from using
information or witness not disclosed to the other party. (See Goodman v. Staples The Office
Superstore, LLC, 644 F.3d 817, 826 (9th Cir. 2011). This is the case "even absent a showing in
the record of bad faith or willfulness." (See Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259
F.3d 1101, 1106 (9th Cir.2001)).

1 **B. Taitz's actions are sanctionable under 28 U.S.C. §1927**

2 Under 28 U.S.C. § 1927, courts are empowered to sanction “. . . who so
3 multiplies the proceedings in any case unreasonably and vexatiously . . . [by
4 compelling them] to satisfy personally the excess costs, expenses, and attorneys’
5 fees reasonably incurred because of such conduct.” 28 U.S.C. §1927. Courts
6 interpret § 1927 sanctions as requiring a showing of “subjective bad faith,” which
7 “is present when an attorney knowingly or recklessly raises a frivolous argument.”⁹
8 Taitz being an attorney and being actively involved in this case as party and
9 counsel is subject to its authority.
10

11 In Primus, the 9th Circuit Court noted “[a] finding of bad faith is warranted
12 where an attorney knowingly or recklessly raises a frivolous argument.” In the
13 court’s view, “the pursuit of a claim without reasonable inquiry into the underlying
14 facts can be the basis for a finding of bad faith.”¹⁰ Taitz throughout this case has
15 diverted from the facts, by excessive, wasteful, and vexatious filings, to suppress
16 the truth

17 Taitz has caustically attacked Ostella and her counsel without merit and has
18 disrespected the Court’s orders. Disrespecting the Court is an abusive litigation
19 tactic that is reprehensible.¹¹ Even if procedural rules exist which sanction the
20 same conduct, Court’s inherent power supersedes to invoke its power.¹² Taitz’s
21

22 ⁹ B.K.B. v. Maui Police Dep’t, 276 F.3d 1091, 1107 (9th Cir. 2002) (quoting In re Keegan
23 Mgmt. Co., Sec. Lit., 78 F.3d 431, 436 (9th Cir. 1996)).

24 ¹⁰ Primus Automotive Fin. Servs., Inc. v. Batarse, 115 F.3d 644, 649 (9th Cir. 1997)).

25 ¹¹ Leon v. IDX Systems, 464 F.3d 951, 958 (9th Cir. 2006). This includes the Court’s authority
26 to sanction conduct abusive of the judicial process. Chambers v. NASCO, Inc., 501 U.S. 32, 43-
45 (1991).

27 ¹² Haeger v. Goodyear Tire & Rubber Co., 813 F.3d 1233, 1243 (9th Cir.2016) (citations and
28 internal quotations omitted).

1 conduct throughout this case, has displayed a vexatious pursuit. Such is
2 sanctionable.¹³ The nine (9) years this case has been on the books is due to the
3 exhaustive and needless filings by Taitz, only serving to frustrate the timely
4 dispensation of this case. Taitz affirmative defenses should be stricken and Taitz
5 should not be able to introduce any evidence, as she has failed to disclose it to
6 Ostella.

7
8 **IV. ARGUMENT FOR SUMMARY JUDGMENT**

9 **A. Summary Judgment is Appropriate Where Facts are not in**
10 **Dispute**

11 Summary judgment is mandated "against a party who fails to make a
12 showing sufficient to establish the existence of an element essential to that party's
13 case, and on which that party will bear the burden of proof." Celotex Corp. v.
14 Catrett, 477 U.S. 317, 322 (1986). In this instance, there is no genuine dispute as
15 to any material fact because the issue is one of law. In such instances, summary
16 judgment is a favored procedure. Tokio Marine & Fire Ins. Co., Ltd. v. United Air
17 Lines, Inc., 933 F. Supp. 1527, 1529 (C.D. Cal. 1996). Summary judgment is
18 useful in this matter. Scripps Clinic & Research Foundation v. Genentech, Inc.,
19 927 F.2d 1565 (Fed Cir. 1991). This case is without issues of credibility of
20 witnesses, motivation and intent, bias, or state of mind; hence, summary judgment
21 is proper in this case. *See* 9th Circuit cases.¹⁴ Summary judgment should be
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23
24 ¹³ *See* Anheuser-Busch, Inc. v. Natural Beverage Distributors, 69 F.3d 337, 348 (9th Cir.1995)
25 Miller v. City of Los Angeles, 661 F.3d 1024, 1036 (9th Cir. 2011); Gomez v. Vernon, 255 F.3d
26 1118, 1134 (9th Cir. 2001); Fink v. Gomez, 239 F.3d 989, 993-94 (9th Cir. 2001).

27 ¹⁴ Earp v. Ornoski, 431 F.3d 1158, 1170 (9th Cir. 2005), cert. denied, 547 U.S. 1159 (2006);
28 motivation or intent, Douglas v. Anderson, 656 F.2d 528, 535(9th Cir. 1981); bias, Alameda
Books, Inc. v. City of Los Angeles, 631 F.3d 1031, 1043 (9th Cir. 2011); or a person's state of
mind. F.T.C. v. Network Services Depot, Inc., 617 F.3d 1127, 1139 (9th Cir. 2010).

1 granted "if the movant shows that there is no genuine dispute as to any material
2 fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
3 56(a). Given the paucity of Taitz's information, any "bald assertions by Taitz that
4 genuine issues of material fact exist will be deemed insufficient."¹⁵

5
6 **B. Summary Judgment Is Appropriate in Libel Per Se Cases Such as**
7 **This One Where Only Questions of Law Are Presented.**
8

9 Libel is an unprivileged written publication that is false and that causes
10 another to be exposed to hatred, contempt, ridicule or causes to be shunned or
11 avoided, or which has a tendency to injure him in his occupation.¹⁶ Libel is an
12 invasion of the interest in a person's reputation.¹⁷ The Libelous publication cannot
13 be accidental without intent and factual nature.¹⁸ The Libel must be made to one or
14 more people who could understand the defamatory meaning and impact.¹⁹

15 Libel *per se* is actionable on its face as it is read by the general public. *See*
16 Slaughter; MacLeod; Downing; Crowe; and Clark.²⁰ If a publication is shown to
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19 ¹⁵ Galen v. Cnty. of L.A., 477 F.3d 652, 658 (9th Cir. 2007).

20 ¹⁶ Calif. Civil Code §45.

21 ¹⁷ Anthoine v. North. Cent. Counties Consortium, 571 F.Supp.2d 1173 (E.D. Cal. 2008).

22 ¹⁸ Price v. Stoessel, 620 F.3d 992, 998 (9th Cir. 2010),

23 ¹⁹ Scott v. Solano County Health and Social Services Department, 459 F.Supp.2d 959 (E.D. Cal.
24 2006). *See also*, ". . . libel . . . has a natural tendency to injure a person's reputation. Taus v.
25 Loftus, 54 Cal. Rptr. 3d 775, 804, 40 Cal 4th 683, 151 P.2d 1185 (Cal. 2007).

26 ²⁰ Clark v. McClurg, 215 Cal. 279, 284, 9 P.2d 505 (Cal. 1932). In both instances, no factual
27 inquiry is required. A libel that is defamatory without the need to introduce explanatory matter
28 is libel on its face or "per se" libel. Id. § 45a; Slaughter v. Friedman (1982) 32 Cal.3d 149, 185
Cal.Rptr. 244, 649 P.2d 886. Examples of libelous publications that can have such a tendency are
those asserting a refusal to pay just debts, Information Control Corp. v. Genesis One Computer
Corp., 611 F.2d 781, 783 (9th Cir. 1999), and mental derangement, Crowe v. County of San
Diego, 608 F.3d 406, 441 (9th Cir. 2008). Libels per se are actionable even if they are
susceptible to innocent interpretations. MacLeod v. Tribune Pub. Co., 343 P.2d 36, 52 Cal.2d

1 be *libelous per se*, such as attributing criminality as is the case in Taitz's
2 accusations of Ostella, damages are presumed. Summary judgment motions,
3 therefore, are particularly appropriate where, as here, a *libel per se* is asserted.

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5 **C. Defendants' "Content" Statement is Libelous Per se.**

6 The primary question presented by this motion for summary judgment is
7 whether Taitz's statements that Ostella *took funds, diverted, or committed fraud* in
8 11 posts is libel on its face. Ostella argues that it is Libel. *First*, there is no
9 question that Taitz authored all of the post and did so with intent to publish. The
10 post were done to reach tens of millions on the Internet via Taitz's own blog.
11 *Second*, there is no question that Taitz's statements were intended as factual
12 statements and not opinion. It was capable of being proved true or false: i.e., either
13 Ostella "*diverted funds*" or "*not diverted funds*", either Ostella "*committed fraud*"
14 or "*not committed fraud.*"

15
16 Taitz did not care to verify the truth of her statement though having her
17 PayPal records in possession. *Third*, there is no doubt that Taitz statements were
18 about Lisa Ostella. *Fourth*, there is no question that the statements are all false.
19 Taitz's PayPal records contradict her accusations of Ostella. Taitz's libel
20 statements had intent and planning to reach millions by accusing Lisa Ostella of
21 criminal activity from Taitz's own blog in a repetitive manner. Hence, Ostella's
22 Motion for Summary Judgment is warranted.

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27 536 (Cal. 1959). Whether a publication is libelous on its face is a question of law to be decided
28 from the bench. Downing v. Abercrombie & Fitch, 265 F.3d 994, 1010 (9th Cir. 2001); (citing

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V. ANALYSIS

A. Ostella's Second Amended Complaint:

Ostella's SAC outlines four (4) Causes of 'Action for Taitz's false reports to law enforcement and 11 postings on her website/blog, www.ONLYTaitzesq.com and www.taitzreport.com,²¹ accusing Ostella of criminal activity.

Claim I - Invasion of Privacy – False Light Publicity:

For Summary Judgment in her favor, Ostella's false light claim establishes the following: (1) Taitz published numerous posts, for hundreds of thousands of people to read on the Internet daily, creating false implications of criminality of Ostella; (2) Taitz's posted criminal accusations of Ostella are highly offensive to a reasonable person and it has the tendency of injuring Ostella's business reputation; (3) Taitz's posts have been repetitive and continuous showing a thoughtful harmful intent; and (4) Ostella's reputation damages are reasonably expected from Taitz's postings. *See Solano*,

Further, Ostella argues that the 9th Circuit in *Flowers*, stated "...false light" cause of action "is in substance equivalent to ... [a] libel claim, and should meet the same requirements of the libel. *Flowers v. Carville*, 310 F.3d 1118, 1133 (9th Cir. 2002).²² All the false light claim elements are in this case."²³

Newcombe v. Adolf Coors Co., 157 F.3d 686, 695 (9th Cir. 1998).

²¹ Taitz launched www.taitzreport.com June 2017 republishing all her false accusations of criminality against Ostella.

²² A "false light" claim, like libel, exposes a person to hatred, contempt, ridicule, or obloquy and assumes the audience will recognize it as such. *Medical Marijuana, Inc. v. ProjectCBD.com* (2016) 6 Cal.App.5th 602, 616, citing *M. G. v. Time Warner, Inc.* (2001) 89 Cal.App.4th 623, 636 [107 Cal.Rptr.2d 504].

²³ ***Fales Light elements*** (a) the defendant disclosed to one or more persons information about or concerning the plaintiff that was presented as factual but that was actually false or created a false impression about him; (b) the information was understood by one or more persons to whom it

1 Taitz blogged accusing Ostella of *diverting funds* in a repetitive Internet
2 campaign from 2009 through 2011 [EXB. # 1 – 11, 13; PPUF ¶ 3 – 14, 16]. Taitz
3 did so while ignoring the truth of her financial records in her control for review and
4 that are contrary to her accusations of Ostella. Taitz’s accusations of Ostella
5 pertain to Taitz’s own PayPal donation account and what she saw in her own
6 PayPal donations account. Subpoenaed records contradict what Taitz has accused
7 Ostella of doing, [EXB# 20, 21, 22, 23; PPUF ¶ 23 - 27].

8 Taitz also claimed that Ostella *hijacked the blog* web-product. Taitz did not
9 own it because Ostella was never able to consummate the web-product transaction
10 with Taitz, amid Taitz’s Internet claims of being hacked, reporting to the FBI,
11 claiming publicly that she owned the blog, and then accusing Ostella of diverting
12 fund. Taitz essentially created a chaotic mess for Ostella making it impossible to
13 sell Taitz the web-product. In this chaotic mess created by Taitz, she did not regard
14 the truth about her ownership to claim that Ostella “hijacked” the blog.

15 Any reasonable person wanting a webmaster would not seek Ostella’s
16 services fearing that she would hijack their site. Taitz has been a master of
17 deception, publicly destroying Ostella’s character and professional reputation,
18 placing Ostella in a false light. Taitz’s claim that Ostella diverted funds and
19 hijacked a site, was a perfect way to destroy Ostella. Any reasonable person can
20 fathom the personal, professional, and social negative impact being deemed a
21 criminal on the Internet can have on a person, especially from a blog that has a
22 visitor counter exceeding 96 million as of 1/18/2018, is ranked in the top 1% by
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25 was disclosed as stating or implying something highly offensive that would have a tendency to
26 injure the plaintiff’s reputation; (c) by clear and convincing evidence, the defendant acted with
27 constitutional malice; and (d) The plaintiff was damaged by the disclosure. See Solano v.
Playgirl, Inc., 292 F.3d 1078, 1082 (9th Cir. 2002).

1 Alexa, has over 500 linked websites, and these accusations have been endured for
2 almost nine (9) years.

3 Taitz's posted accusations demonstrate actual malice,²⁴ because Taitz was
4 aware that i). Ostella owns the *defendourfreedoms* domains as she had not paid
5 for Ostella's services, ii). that the blog and the PayPal account were not "hacked,"
6 [EXBS #26 and #27; PPUF ¶ 29 & 30], and iii). that Taitz is aware that her own
7 Bank of America account is the only account associated with her PayPal donation
8 accounts. [EXB# 20, 21, 22, 23, 24; PPUF ¶ 23 - 27]

9 Taitz's 11 posted statements and published law enforcement reports,
10 accusing Ostella as she has continuing for nearly nine (9) years, creates a
11 reasonable assessment that Ostella has been damaged and will be for the
12 foreseeable future by virtue of the publications being on the Internet with almost
13 perpetual duration. Hence, *Google keyword* search [Lisa Ostella] results "*Crimes*
14 *Lisa Ostella*" – *OrlyTaitzEsq.com*. [EXB #13; PPUF ¶ 16], as of January 8, 2018.

15 Therefore, Ostella has met her burden and Summary judgment in her favor is
16 warranted for *Claim I – False Light Publicity*.

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19 ***Claim II - Invasion of Privacy – Appropriation of Name:***

20 For Summary Judgment in her favor, Ostella's claim of commercial
21 misappropriation establishes the following: (1). Taitz use of Ostella's, (2). Taitz's
22 appropriating Ostella's name for Taitz's commercial advantage, (3). Taitz
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26 ²⁴ **Actual malice'** —is, with knowledge that it was false or with reckless disregard of whether it
27 was false or not." New York Times v. Sullivan (1964) 376 U.S. 254, 279-80 [11 L.Ed.2d 686,
84 S.Ct. 710, 95 A.L.R.2d 1412].

1 appropriated without Ostella's consent; and (4). the appropriation injured Ostella.²⁵
2 In Downing, the 9th Circuit stated, any person who knowingly uses another's name,
3 voice, signature, photograph, or likeness, in any manner ... for purposes of
4 advertising ... without such person's prior consent... shall be liable for any damages
5 sustained by the person."²⁶ Ostella's ownership of her name and likeness is a
6 legally recognized right.²⁷

7 Further, Ostella argues that her name appears on Taitz blog cite proximate to
8 advertisements on Taitz's blog and Taitz posts plea for donations. This relation
9 between Taitz requesting donations via her blog, her blog acquiring sponsoring
10 advertisements, proximately to Lisa Ostella's name in posts, demonstrates the
11 common law requirement of a direct connection between the alleged use of the
12 name and the commercial purpose.

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14 Needless to say, Taitz's blog visitor counter registers increase through the
15 years as well as increases in advertising. Taitz has financially benefited at the
16 expense of Ostella, by appropriating Ostella's name in a narrative on her blog so
17 that potential donors would have sympathy for Taitz and her claimed causes.
18 Taitz's written statements created a sensational narrative that Ostella misdirected
19 funds by embezzling from her foundation, that Ostella had a criminal history, that
20 Ostella committed fraud, and that Taitz needed donor support to fend off what she
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22 ²⁵ **Elements for Appropriation of Name** – See Newcombe v. Adolf Coors Co., 157 F.3d 686,
23 692 (9th Cir.1998), Jones v. Corbis Corp., 815 F.Supp.2d 1108, 1113 (C.D.Cal.2011) *aff'd*, 489
24 Fed.Appx. 155 (9th Cir.2012).

25 ²⁶ Downing v. Abercrombie & Fitch, 265 F.3d 994, 1001 (9th Cir.2001) (citing Eastwood v.
Superior Court, 149 Cal.App.3d 409, 416, 198 Cal.Rptr. 342 (1983)).

26 ²⁷ Michaels v. Internet Entertainment Group, Inc., 5 F. Supp. 2d 823, 836 (CD Cal. 1998). "The
27 common law of California recognizes this right of publicity in a person's name, likeness and
28 identity."

1 claimed Ostella did. Taitz willfully violated Ostella's right to privacy under
2 California law.²⁸

3 Therefore, Ostella has met her burden and Summary judgment in her favor is
4 warranted for *Claim II – Appropriation of Name*

5 ***Claim III - Cyber-Harassment:***

6 For Summary Judgment in her favor, Ostella claims that Taitz has cyber
7 harassed her by Taitz accusing her online, through Taitz's 11 posts and published
8 law enforcement reports, that accused Ostella of diverting funds, of committing
9 fraud, and of hijacking the blog. To a webmaster, like Ostella, whose life-blood for
10 her business is the Internet, it is absolutely devastating on many levels. Taitz
11 accusing Ostella as she has if cyber harassment²⁹ without any legitimate purpose,
12 and has caused emotional distress that comes with being accused of committing
13 theft and fraud. [EXB # 1 - 11, 13, 16; PPUF ¶ 3 – 14, 16, & 19] This effect is
14 compounded by Taitz brandishing herself as credible because she is a lawyer and
15 touts that she should be trusted for what she states and claims. All of Taitz's
16 postings about Ostella have an *intentional harassing* effect on Ostella that any
17 reasonable person can appreciate.³⁰
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21 ²⁸ Cal. Civ. Code § 3344(a) (2013).

22 ²⁹ **Harassment: Calif. C. Civ. Proc. 527.6(3)**"Harassment" is defined as ". . . a knowing and
23 willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses
24 the person, and that serves no legitimate purpose. The course of conduct must be such as would
cause a reasonable person to suffer substantial emotional distress, and must actually cause
substantial emotional distress to the plaintiff." (§ 527.6, subd. (b), italics added.)

25 ³⁰ See Rockridge Trust v. Wells Fargo, N.A., 985 F. Supp. 2d 1110, 1155 (N.D. Cal. 2013).
26 Any reasonable person would be caused to suffer substantial emotional distress from being
27 criminally accused as Ostella has been by Taitz's numerous publications. (See Cal. Civ. Proc.
Code § 527.6)

1 Further, Ostella argues that, Taitz repetitive pattern of postings, aggravates
2 the harassment, and that it would cause any *reasonable person to suffer substantial*
3 *emotional distress*. Taitz's posts coax donors and followers to garner bad
4 sentiments toward Ostella. Ostella has felt the stigma of being accused and the
5 apprehension of possible backlash from Taitz's followers and financial supporters,
6 Taitz has intentionally and repeatedly placed Ostella in a harassing and hostile
7 environment for almost nine (9) years.

8 Ostella argues that it established the requisite elements of experiencing
9 cyber harassment and merits that a retraining order be imposed on Taitz, pursuant
10 to California Code of Civil Procedure §527.6.³¹ By enjoining Taitz, Taitz should
11 be ordered to strike all posts naming Lisa Ostella that are in the United States on
12 servers and outside the United States on servers, and enjoined, from (1) Engaging
13 in acts on the Internet commonly referred to as 'Spoofing' which includes using
14 false names in e-mails or postings to or regarding Ostella; and (2) Posting on
15 websites, Blogs, or otherwise putting information on the Internet of a negative
16 nature against Ostella. Furthermore, that Taitz is prevented from seeking
17 retribution against relatives of Lisa Ostella, and shall not post about Ostella's
18 family. Furthermore, Taitz is to pin a retraction pursuant to Cal. Civ. §48a, to the
19 top of blog for 1 year) apologizing and reversing what has been said about Lisa
20 Ostella.
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22 Therefore, Ostella has met her burden and Summary judgment in her favor is
23 warranted for *Claim II – Cyber Harassment*
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27 ³¹ "[a] person who has suffered harassment . . . may seek a temporary restraining order and an
injunction prohibiting harassment as provided in this section." § 527.6(6)(A) and (B).

Claim IV - Defamation "per se" – "Libel per se":

For Summary Judgment in her favor, Ostella's claim for *defamation, Libel per se*, establishes the following: (1). a publication[s] "postings" to tens of millions to read occurred, (2). the postings are based on false information, (3). the postings are defamatory, and (4). the postings are unprivileged, and that (5). the postings cause damages."³² Ostella also established that Orly Taitz is the author and publisher of the posts. Where a statement is libel *per se*, damage to reputation is presumed, and the Plaintiff need not show actual damage.³³

Further, Ostella argues, there is no doubt, at all, of the tenor of Taitz's accusations of Ostella that have lasted through nearly nine (9) years on the Internet. California law establishes that statements are defamatory *per se*, if they accuse a person unambiguously charge a crime, dishonesty, fraud, . . . , or are falsehoods that injure one in his office, business, profession, or occupation.³⁴ Taitz's 11 posts and published law enforcement reports accusing Ostella of

³² See Taus v. Loftus, 40 Cal. 4th 683, 720 (2007) (citation omitted). Also See **Libel**, Libel is the written form of **defamation**, defined as "a false and unprivileged publication by writing. . . or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy. . . or which has a tendency to injure him in his occupation." Sanders v. Walsh, 219 Cal. App. 4th 855, 862 (2013), Cal. Civ. Code § 45. **Libel per se** is a statement that is defamatory on its face. Id. § 45(a); Barnes-Hind, Inc. v. Super. Ct., 181 Cal. App. 3d 377, 381 (1986).

³³ Libel that is defamatory without requiring explanation is libel on its face or libel *per se*, and is actionable without the need to prove damages. Civ. Code § 45a; Walker v. Kiouisis, 93 Cal. App. 4th 1432, 1441 (Ct. App. 2001). False allegations of criminal conduct are one example of libel *per se*. (See Weinberg v. Feisel (2003) 110 Cal.App.4th 1122, 1136 [2 Cal.Rptr.3d 385]).

³⁴ See Boyich v. Howell, 221 Cal. App. 2d 801, 802 (Cal. Ct. App. 1963); Snider v. Nat'l Audubon Soc'y, Inc., 1992 WL 182186, at *4, 1992 U.S. Dist. Lexis 10017, *12 (E.D.Cal.1992) (denying motion to dismiss where "the clear implication from the article is that plaintiff is being investigated by the I.R.S."); Barnes-Hind, Inc., 181 Cal. App.3d at 385 ("Perhaps the clearest example of **libel per se** is an accusation of crime."); Plumb v. Stahl, 54 Cal. App. 645, 646, 202 P. 468 (1921) ("it has always been held that it is libel *per se* to charge a person with the commission of a crime involving moral turpitude").

1 diverting funds, hijacking a blog, and committing fraud, is just that, i.e.,
2 *defamation – libel per se*. In Christian Research Institute, the Court stated that a
3 defendant’s website had stated that a “Federal Criminal Mail Fraud Investigation”
4 had been launched against plaintiffs, constituted libel under Civ. Code § 45).³⁵

5 Taitz’s has committed Libel and it was done in an aggravated manor. Taitz
6 repeated libel is a series of false and unprivileged publications by writing on her
7 blog www.oryltaitzesq.com, exposing Lisa Ostella to injury in her occupation.³⁶
8 Such a libel is one that has a natural tendency to injure a person's reputation.

9 Taitz disregard the truth of her records, explanations, and events. As a
10 licensed professional, Taitz was fully aware her PayPal donation records, status of
11 web-product ownership, her limited knowledge of the web-products C-panel, and
12 her own bank account’s association to her donations accounts.

13 Moreover, Ostella argues that Taitz accused Ostella falsely to law
14 enforcement. [EXB# 16; PPUF ¶ 19]. Taitz was aware of Ostella’s identity and
15 Taitz should have known that Ostella did not take \$10,000 as Taitz reported in her
16 Orange County Sheriffs Dept. report and in her FBI report asserted in *Dossier 6*.
17 [EXB# 13 - 17; PPUF ¶ 16 - 20] Taitz disregards what her PayPal records
18 demonstrate which contradicts her law enforcement reports accusing Ostella.
19 Ostella asserts that false reporting is not protected public interest or protected
20 speech.³⁷
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25 ³⁵ See Christian Research Institute v. Alnor (2007) 148 Cal.App.4th 71, 80.

26 ³⁶ See SDV/ACCI, Inc. v. AT & T Corp., 522 F.3d 955, 959 (9th Cir. 2008).

27 ³⁷ See Abuemeira v. Stephens (2016) 246 Cal.App.4th 1291, 1299 [201 Cal.Rptr.3d 437]
28 quoting Lefebvre v. Lefebvre (2011) 199 Cal. App. 4 696 [where the defendant’s police report
was determined to be *false* . . . against the Plaintiff].

1 Taitz has falsely accused Ostella of committing criminal activity, fraud and
2 theft which has brought to Ostella disrepute which is tantamount to *Libel per se*
3 action.³⁸ Caselaw history places Taitz posting clearly as *defamation, Libel per se*.³⁹

4 Therefore, Ostella has met her burden and Summary judgment in her favor is
5 warranted for *Claim IV – Defamation Per Se / Libel Per Se*.

6
7 **VI. DAMAGES:**

8 Taitz's libelous accusations of Ostella draw punitive treatment.⁴⁰ Taitz's
9 posts have been last seen on the *World Wide Web*,⁴¹ having devastating impact, as
10 late as January 8, 2018, constituting 8-3/4 years of being viewable by tens of
11 millions of visitors.⁴² Any person would reasonably fathom being harmed if they

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14 ³⁸ See Axelbank v. Rony, 277 F.2d 314, 318 (9th Cir. 1960)(a letter written to a News Agency
15 **falsely accusing** Plaintiff of pirating a film was libel *per se* because the letter on its face
16 suggested Plaintiff was untruthful, he received stolen property, and he intentionally
17 misappropriated literary property); Slaughter v. Friedman, 32 Cal. 3d 149, 153-54 (1982).
18 Falsely charging a person with a violation of confidence reposed in him or with treachery to his
19 associates is also actionable *per se*.

20 ³⁹ See Dethlefsen v. Stull, 86 Cal. App. 2d 499, 502 (Cal. Ct. App. 1948)(a **published letter**
21 stating that plaintiff received partnership funds that he failed to deposit to the firm's account was
22 held libelous on its face); Bates v. Campbell (1931) 213 Cal. 438, 443(**an accusation** that
23 plaintiff, a publicity agent, continued to use the employer's stationery after discharge from her
24 employment, *misleading various persons*, was a charge of breach of confidence and trust, and
25 tended to injure plaintiff in her occupation, was **libelous per se**.); Maher v. Devlin (1928) 203
26 Cal. 270, 275, Stevens v. Snow (1923) 191 Cal. 58, 63 (imputing business misconduct in single
27 transaction or occurrence).[emphasis added]

28 ⁴⁰ See Shively v. Bozanich, 31 Cal. 4th 1230, 1243, 80 P.3d 676 (2003); Prosser, Torts 2nd Ed.,
p. 787. One who publishes false and libelous statements is liable for general, special and punitive
(exemplary damages). Each repetition of the defamatory statements is a separate publication,
giving rise to a separate cause of action.

⁴¹ Oja v. U.S. Army Corps of Eng'rs, 440 F.3d 1122, 1129 (9th Cir.2006) ("the publication of
defamatory on the web has the potential to be vastly more offensive and harmful than it might
otherwise be in a more circumscribed publication.").

⁴² One "general rule" is that a statement is republished when it is "repeat[ed] or recirculate[d] ...
to a new audience." Hebrew Acad. of S.F. v. Goldman, 42 Cal.4th 883, 70 Cal.Rptr.3d 178, 173

1 were criminally accused, as Taitz has done to Ostella for nearly 9 years, accusing
2 Ostella of committed fraud, hijacking a website and stealing funds.

3 Since Ostella is a webmaster, dependent on the Internet as her professional
4 life-blood, Taitz accusing her online is severe having a perpetual disastrous effect
5 on Ostella's present and future life and retirement potential. Taitz's planned,
6 organized online campaign to destroy Ostella's online reputation has an endless
7 impact into Ostella's retirement years.

8 Ostella has lost her clientele and prospects are severely limited because of
9 Taitz's posts. Each post, lasting on the *World Wide Web*, for nearly 9 years, has an
10 individual negative affect on Ostella's career, present and future. Taitz should be
11 punitively treated for each post and its years of publicity online. Taitz's efforts to
12 obstruct and prolong this case should be as well considered. Taitz has been her
13 own *judge and jury* accusing Ostella online for tens of millions to read, without
14 having the information to support it and not caring about the truth.

15 Ostella, therefore seeks the following:

- 16 i). General/presumed Damages in the amount of \$10,000,000.00,
17 ii). Special/Compensatory Damages \$5,000,000.00,
18 iii). Punitive/Exemplary Damages as determined by the Court, and
19 iv). Equitable relief, in addition to monetary damages outlined in (i)-(iv), by
20 way of an injunction, an Order stating that:
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23 P.3d 1004, 1007 (2007); Yeager v. Bowlin, 693 F. 3d 1076, 1082 (9th Cir. 2012) (holding that "a
24 statement on a website is not republished unless the statement itself is substantively altered or
25 added to, or the website is directed to a new audience"); Larue v. Brown, 235 Ariz. 440, 333
26 P.3d 767, 773 (Ariz.Ct.App.2014)(comments and replies to a defamatory post constitute a new
27 cause of action); Christoff v. Nestle USA, Inc., 47 Cal.4th 468, 97 Cal.Rptr.3d 798, 213 P.3d
132, 137 (2009); Medifast, Inc. v. Minkow, No. 10-CV-382 JLS (BGS), 2011 WL 1157625, at
*1 (S.D.Cal. Mar. 29, 2011) (the single publication rule "does not address the issue of repeated
publications of the same libelous matter over a substantial period of time.")

1 a. Order Taitz to publicly state a retraction, pursuant to *Cal. Civ.*
2 §48a, of all her posts and publications about Ostella on her
3 websites/blogs, and social media sites; and make a formal public
4 apology on her websites/blogs and social media accounts for her false
5 statements and allegations;

6 b. Ordering Taitz to remove any and all postings and publication
7 about and naming Lisa Ostella, or any other third party as associated
8 with Lisa Ostella from all her websites/blogs, website/bog archives,
9 and all her social media and public forum sites;

10 c. Enjoining Taitz from ever mentioning or alluding to Lisa
11 Ostella and any of her family members, online and offline, including
12 but not limited to Taitz's websites/blogs, social media sites, public
13 forums or through e-mail; and

14 d. Enjoining Taitz from ever mentioning or alluding to Lisa
15 Ostella and family members and neighbors online and offline,
16 including but not limited to Taitz's websites/blogs, social media sites,
17 public forums or through e-mail.
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20 v). Enjoining Taitz from contacting Ostella, her husband, Frank Ostella,
21 Children, Parents, Siblings or any other family member or neighbors, at their
22 residence, or place of business and or school.

23 vi.) Costs incurred in this Action including costs associated with legal
24 representation, by Ostella amount to \$ 188,300

25 vii). Pre-Judgment and Post-Judgment Interest; and

26 viii). Other relief deemed by the Court as just and proper.
27

Case law supports what Ostella seeks by virtue of the following cases: *See Baker v. PrivatAir, Inc.* Los Angeles County Superior Court BC322198, 12/13/05;⁴³ *O'Lee v. Compuware Corp.*, No. A111774, 2007 Cal. App. Unpub. LEXIS 2691, 2007 WL 963450 (Cal. Ct. App. Apr. 2, 2007);⁴⁴ *Armstrong v. Shirvell*, 596 Fed.Appx. 433 (6th Cir.2015), cert. denied, ___ US ___, 136 S.Ct. 403, 193 L.Ed.2d 315 (2015);⁴⁵ *Leyshon v. Diehl Controls North America, Inc.*, 407 Ill.App.3d 1, 349 Ill.Dec. 368, 946 N.E.2d 864, 877 (2010);⁴⁶ and *Cohen v. Hansen*, Case No. 2:12-cv-01401-JCM-PAL (D. Nev. March 1, 2016).⁴⁷

⁴³ *Baker* – Result - verdict against first defendant for employment-related defamation totaled \$14 million, plus \$10 million in punitive damages; verdict against second defendant totaled \$10 million for defamation, plus \$10,000 in punitive damages; verdict against third defendant totaled \$2 million for defamation, plus \$1,500 in punitive damages; and verdict against fourth defendant totaled \$10 million for defamation, plus \$2,500 in punitive damages).

⁴⁴ *O'Lee* - Result - Appellate Court upheld award by Jury to O'Lee for a defamatory statement of Fraud \$550,000 and McCarthy \$600,000 in compensatory damages and \$5 Million each for punitive damages, punitive damages lowered by the trial court to O'Lee for \$1.65 Million and to McCarthy \$1.8 Million).

⁴⁵ *Armstrong* - Result - (Jury awarded Armstrong \$4.5 million in total damages, \$750,000 in compensatory damages and \$500,000 in exemplary damages for defamation, \$1,000,000 in compensatory damages for casting Armstrong in a false light, \$1,750,000 in compensatory damages for intentional infliction of emotional distress, \$100,000 in compensatory damages and \$400,000 in exemplary damages for stalking for publications on the internet and wrongful actions from April 2010 to September 30, 2010. Sixth Cir. reduced the judgment in Armstrong's favor to \$3.5 Million. Deducting \$750,000 for Armstrong's False Light Claim as duplicative award).

⁴⁶ *Leyshon* – Result - (defamation claim, the jury awarded the plaintiff \$2 million in compensatory damages and \$10 million in punitive damages, the jury found the statement was defamation *per se*, Trial Court granted request for remittitur and reduced the punitive award to \$6 Million, judgment upheld);

⁴⁷ *Cohen* – Result - (jury awarded Cohen, damages totaling \$38.3 Million against Northwest defendants for defamation *per se* and false light invasion of privacy amounting to Fraud allegations made in internet website publications).

CERTIFICATE OF SERVICE

I, J.B. Lorenzo, hereby certify that a true and correct copy of Plaintiff Lisa Ostella's, Memorandum of Law in support of Plaintiff, Lisa Ostella's Motion for Summary Judgment and Damages was served this 27th day of March, 2018, electronically through the Court's ECF filing system upon the following:

SCHUMANN | ROSENBERG, LLP

Kim Schumann, Esquire
Jeffrey Cunningham, Esquire
3100 S. Bristol Street, Suite 400
Costa Mesa, CA 92626
kschumann@srllawfirm.com
jcunningham@srllawfirm.com
Attorney for Defendant Orly Taitz

LORENZO LAW FIRM. P.A

/s/ J.B. Lorenzo
Jose B. Lorenzo
2040 Delta Way
Tallahassee, FL 32303
admin@lorenzolawfirm.com
Attorney for Plaintiff